

May 12, 2022

The Honorable Lily Batchelder
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Section 871(m) Transition Rule Extension

Dear Ms. Batchelder:

On behalf of the North American Tax Group (“NATG”) of the International Swaps and Derivatives Association, Inc. (“ISDA”),¹ I am writing in support of the comments submitted by the Securities Industry and Financial Markets Association (“SIFMA”) in its letter dated May 4, 2022 (the “SIFMA Letter”) seeking an extension of the transition rules with respect to section 871(m) as provided in Notice 2020-2 (the “Notice”). The NATG respectfully requests the government to adopt the SIFMA Letter’s recommendation that the section 871(m) transition rules contained in the Notice be extended until at least 18 months after the date on which additional final guidance is issued in respect of such transition rules.

While ISDA members have devoted substantial time and resources to implement the section 871(m) withholding regime, additional guidance is needed in order to carry out fully the delta 0.80 threshold and other aspects of the section 871(m) regime that have been delayed. Because withholding agents will be required to undertake significant efforts in further developing complex systems for the implementation of any additional guidance, the NATG is deeply concerned that there will be insufficient time after the issuance of any such guidance for its members to ensure the proper transition of their existing systems in response to such guidance. The NATG echoes the SIFMA Letter’s observation that section 871(m) is currently operating to capture the predominant majority of the transactions Congress intended to capture with its enactment of section 871(m), and that the section 871(m) anti-abuse rule will apply

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 980 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

during the transition period to prevent taxpayers from improperly avoiding application of withholding tax under section 871(m). For all of the foregoing reasons, the NATG unreservedly agrees with the SIFMA Letter's recommendation.

Thank you for your consideration. We would be pleased to discuss any aspect of this letter with you further.

Yours truly,



Maureen Smith

cc: Tom West, Deputy Assistant Secretary (Tax Policy)
José Murillo, Deputy Assistant Secretary (International Tax Affairs)
Erika Nijenhuis, Senior Counsel, Office of Tax Policy, U.S. Treasury